

**Remarks on Order No. 2000-A:  
Rehearing of RTO Rule  
February 23, 2000**

As pleased as I was with Order No. 2000, I am more so with today's order on rehearing. On procedure, Mr. Chairman, I congratulate you for the speed with which you marshaled the FERC forces to issue this order just one week after the 30-day rehearing period. As one who criticizes tolling orders and delay, I commend everyone for this accomplishment. Had you put it up to a vote, I would have agreed to a one-week toll for the RTO Rule. Equally important for restructuring, participants in the collaborative process will know our final word when they begin on March 1.

Now for the substance. In Order No. 2000, we listed 12 laudable goals for RTOs, the four characteristics and the eight functions. Beyond that, we remained indifferent on the structure. We said that FERC would accept Independent System Operators, stand-alone transmission companies, hybrids and any other form that accomplishes the aims of Order No. 2000. Many in the Transco camp could not believe we meant it. They were thinking that a regulatory agency could not really accept for-profit market-oriented transmission companies, as opposed ISOs, institutions I consider bureaucracies. Today we clarify that Transcos have a place, and I would say a valued place, in a restructured electric industry.

Clarifications of two aspects of the RTO Rule -- market participants and passive ownership -- reaffirm our willingness to accept stand-alone for-profit transmission companies. Being a "market participant" triggers restrictions on ownership of an RTO. The original definition included those providing transmission service and ancillary services to an RTO, in addition to generators, marketers and brokers of energy. Many thought that a Transco provided transmission services to an RTO and that a Transco would provide ancillary services, leaving the ISO as the only form of RTO in Order No. 2000. Pages B-12 through B-15 and page B-17 of the order remove these two categories from the presumption. A market participant encompasses sellers of electricity. It also includes anyone else the Commission finds, in a particular case, has an economic or commercial interest inimical to an independent RTO.

Even after clarifying "market participant," confusion remained. In order to divest transmission, without buyers financing the purchase through an acquisition adjustment, the sellers must retain passive ownership. Passive ownership constitutes a form of buying on the installment plan. Sellers must reserve rights to protect their investment, such as removing directors for malfeasance, reviewing prospective owners for financial standing and the others that the majority in *Entergy* accepted in principle and which we reaffirm today in denying rehearing in that case. On page 213 of Order No. 2000, we declared acceptable passive ownership purely financial in nature. In various other places, such as

note 308, the RTO Rule permitted passive owners to "protect the integrity of their Capital investment." Nevertheless, language in the Rule and commentaries such as passive ownership should "in no way" control the operation of an RTO led people to think that passive owners could not trigger bankruptcy for default, for example. This would leave passive owners of Transcos in an untenable position. Today we clarify that passive owners must not interfere with the day-to-day operations and must preserve "true independent RTO decisionmaking," to quote from page B-25. In the *Entergy* rehearing order we add that the filing requirements and the reservation of rights for passive owners must not lead to preferential access to transmission service.

The second important feature of Order No. 2000-A concerns the "tough" part of the "tough love" the Chairman spoke about during our deliberations last fall. Flexibility and the multiple incentives represent the "love." In whatever form they take, RTOS must take charge of the grid. Many in the ISO camp could not believe we meant it. Today we say that we did. We reaffirm that the RTO, not an integrated utility owner within an ISO that we might approve as an RTO, sets the transmission rates. Owners may, if the RTO agreement allows, state the revenue requirement. The RTO agreement may allow the integrated owners to influence rate design, but only if we find that compatible with the RTOS independence .

I will talk a bit about incentives. On the issue of changes in depreciation to levelized rates, I would add only that taking another course, making the RTO determine the amount of depreciation remaining on each line would prove unworkable. Because of the many transmission systems that the facilities came from and the different rates customers paid, not to mention new customers, making the reconciliation would soon dissolve into chaos.

On pages B-40 and D-17, we reaffirm that performance-based rates and other innovative rate treatment must come through the RTO. On page B-40 we state, on performance-based rates that the RTO must design them. On D-17 we explain, "an innovative ROE treatment for a transmission owner's revenue requirement can best be evaluated in the context of any other innovative rate treatments proposed for the RTO. In addition, justification...involves an evaluation related to the RTO as a whole." That means we will consider incentives for the RTO, not separately for the individual owner. Therefore, even if the rate treatment relates to the revenue requirement, such as a higher return, we will consider it in the context of the entire RTO, including the other incentives the RTO proposes.

We also show we meant what we said that the RTO must take charge of the grid by adopting the auditing requirement we asked about in Order No. 2000. Page B-29 we emphasize that ISO governance as well as Transco ownership interests must undergo the audit. The audit will occur two years after we approve an RTO, and, for passive

ownership every three years afterward. We even incorporate the audit in the regulatory text in section 35.34(j)(1) in a new subparagraph (iv). We also adhere to the requirement in section (k)(7) that the RTO, whether a Transco or an ISO, must have the authority to Order No. 2000 construction for reliability.

In conclusion, today we launch the restructuring ship. Mr. Chairman and my colleagues, we built it strong to withstand the ill winds and rough seas. I urge the participants in the collaborative process to steer her true so that, together, we can guide the stand-alone transmission business safely to port and deliver to the American people the cargo of economic prosperity through low energy prices and increased energy choice.